

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

July 21, 2011

In the Matter of D. C. DEHUFF, Minor.

No. 301731

Oakland Circuit Court

Family Division

LC No. 10-768516-NA

Before: BORRELLO, P.J., and METER and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to a minor child under MCL 712A.19b(3)(b)(i), (g), (j), (k)(iii), (k)(v), and (k)(vi). We affirm.

On February 4, 2010, respondent experienced her first psychotic break, caused by schizoaffective disorder, depressive type. As a result of that condition, respondent heard voices in her head that led her to harm her 11-month-old son. Respondent sliced the child's throat and stabbed him in the chest with a butcher knife. Respondent's husband, B. DeHuff, was home at the time, but he was outside and unable to prevent respondent's actions. After respondent injured the child, she tried to kill herself, but B. DeHuff was able to prevent this action. The child suffered a collapsed lung, a fractured rib, and Horner Syndrome, which caused his eyelid to droop because of damage to the nerves. He recovered from most of his injuries, but the Horner Syndrome may require surgery in the future.

Respondent was deemed incompetent to stand trial in the criminal proceedings resulting from the incident. At the time of the termination and best-interest hearings, respondent remained housed at the Center for Forensic Psychiatry ("the Center") and was undergoing intensive inpatient treatment to attempt to regain competency and stabilize her mental illness. Petitioner filed a petition for the removal of the child from the home and termination of respondent's parental rights. B. DeHuff pleaded no contest to the allegations in the petition, complied with petitioner's services, and regained custody of the child during the proceedings to terminate respondent's parental rights.

Respondent argues that reversal is required because petitioner did not make reasonable efforts to reunify her with the child. "We review for clear error a trial court's factual findings as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); see also MCR 3.977(K). Review of an unpreserved issue is limited to determining whether a plain error occurred that affected substantial rights. *In re Egbert R Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007), *aff'd* 480 Mich 19 (2008).

Generally, petitioner is required to make reasonable efforts to rectify the conditions that caused a child's removal by adopting a service plan. MCL 712A.18f; *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). However, when aggravated circumstances are present, petitioner must seek termination of parental rights and is not required to provide reunification services. *In re HRC*, 286 Mich App 444,463-465; 781 NW2d 105 (2009); MCL 712A.19a(2); MCL 722.638(1)(a). Aggravated circumstances involve child abuse that encompasses, among other things, battering, torture, or severe physical abuse; life-threatening injury; or murder or attempted murder. MCL 722.638(1)(a)(iii), (v), and (vi). MCL 722.622(f) defines child abuse as, among other things, "harm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury . . . by a parent . . ."

Respondent argues that reversal is required because the trial court never made a finding that aggravated circumstances existed. She contends that no such circumstances did exist. Respondent is correct that there was never a judicial determination that aggravated circumstances existed in this case. However, respondent never objected in the trial court to the procedure employed or requested a finding regarding aggravated circumstances. In addition, respondent had adequate notice with respect to this issue because petitioner requested termination in the initial petition pursuant to MCL 712A.19b(3)(k)(iii), (v), and (vi), which mirror subsections MCL 722.638(1)(a)(iii), (v), and (vi). Moreover, there was never any dispute that the child suffered a life-threatening injury at respondent's hands that clearly constituted an aggravated circumstance under MCL 722.638(1)(a)(v). At any rate, although petitioner did not provide respondent with any services, she received intensive inpatient treatment at the Center. Respondent was involved in several group and individual therapy sessions and was on a strict medicinal regimen prescribed by her treating psychiatrist. Therefore, respondent was not hindered by petitioner's failure to provide services. Any error or omission was harmless and does not require reversal. *In re HRC*, 286 Mich App at 465.

Respondent further argues that because her actions were not intentional, but rather the result of a mental illness, the child's injury was not "nonaccidental" as required by MCL 722.622(f) and therefore not child abuse. However, the evidence was undisputed that respondent inflicted the life-threatening injuries on the child and that the incident was not accidental under the commonly understood meaning of that word. When the termination petition was filed, petitioner had the police report, which stated that respondent inflicted the injuries. Dr. Bethany Mohr, medical director of the child-protection team at the University of Michigan Hospital where the child was treated, reported and then testified that the injuries were not accidental and the result of child abuse. Although respondent was declared incompetent to stand trial and found not guilty by reason of insanity ("NGRI") in the criminal proceedings after the termination order was entered, respondent's ability to form "intent" was not at issue during the pertinent timeframe because the focus of the instant proceedings was the protection of the child, not respondent's criminal guilt.

Respondent next argues that the trial court erred in finding that the statutory grounds for termination were proven by clear and convincing evidence and that termination was in the child's best interests. In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Once the petitioner has established by clear and convincing evidence that there are statutory grounds for

termination and that termination of parental rights is in the child's best interests, the trial court must order termination of parental rights. MCL 712A.19b(5). As noted earlier, we review the trial court's termination decisions for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

The trial court did not clearly err in concluding that clear and convincing evidence supported termination of respondent's parental rights under MCL 712A.19b(3)(b)(i) (physical injury, with recurrence likely), (g) (failure to provide proper care or custody, without regard to intent, and no expectation of doing so within a reasonable time), and (j) (likelihood of harm). Clear and convincing evidence established that respondent sliced the minor child's neck twice and stabbed him in the chest. Although respondent was mentally ill at the time of the incident and not in control of her actions, the plain language of these sections indicate that they do not require culpable neglect or blameworthiness. See also *In re Jacobs*, 433 Mich 24, 36-37; 444 NW2d 789 (1989) (pertaining to MCL 712A.19b[3][g]). The evidence established that the child suffered physical injury because of respondent's action and, without regard to intent, respondent had failed to provide proper care and custody for the child.

The evidence also established that there was a reasonable likelihood that the child would suffer from injury, abuse, or harm in the foreseeable future if placed in respondent's home, and that there was not a reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time considering the child's age. See MCL 712A.19b(3)(b)(i), (g), and (j).

At the time of the termination hearing, the child could not be returned to respondent's care. Respondent was still involuntarily committed to the Center waiting to gain competency to stand trial on criminal charges. Respondent had been diagnosed with schizoaffective disorder, depressive type, a mental illness that she would have for the rest of her life. Respondent had paranoid delusions and auditory hallucinations, and she displayed a substantial disorder of thought and mood, which significantly impaired her judgment. She regularly took three medications and took a fourth as needed. She was actively participating in intensive inpatient psychiatric treatment and psychotherapy and was extremely remorseful about what she had done. Respondent had made a lot of progress toward becoming competent to stand trial and understanding the incident and her mental illness. Her symptoms were still present but to a lesser degree and with less frequency. Respondent's chief clinician at the Center, Thomas Ward, believed that respondent had the capacity to care for her child if she stayed on all of her medication for the rest of her life, was under the care of a psychiatrist, and continued in outpatient therapy. However, he could not offer a timeline in which respondent would be able to parent her child. He thought that she would return to legal competency within 15 months. If respondent regained competency and was allowed to plead NGRI, she would be sent back to the Center and begin to work on returning to a normal life.

Under these circumstances, at the time of the termination hearing there was no reasonable expectation that the child could be returned to respondent's care within a reasonable time considering his young age. Respondent was not yet competent to stand trial, and therefore the

criminal case and respondent's future had not yet been determined. Considering this evidence, the trial court did not err in finding that termination of respondent's parental rights was proper pursuant to MCL 712A.19b(3)(b)(i), (g), and (j).¹

Clear and convincing evidence also established MCL 712A.19b(3)(k)(v) (abuse involving a life-threatening injury). Indeed, according to Dr. Mohr, the child's injuries were life-threatening and not accidental. As discussed previously, respondent's actions against her child were encompassed in the definition of "child abuse" contained in MCL 722.622(f). Finally, any error by the trial court in finding MCL 712A.19b(3)(k)(iii) and (vi) established was harmless. See *In re Huisman*, 230 Mich App 372, 384-385; 584 NW2d 349 (1998), overruled in part on other grounds by *Trejo*, *supra*. Only one statutory basis need be established to justify termination of parental rights. See *Trejo*, 462 Mich at 355-356.

The trial court also did not clearly err in concluding that termination of respondent's parental rights was in the child's best interests. There was clear and convincing evidence that before the incident respondent was a loving and devoted mother who provided proper care and custody for the child. There was also evidence that respondent had the support of her parents, her husband, and her husband's parents. Respondent's treating therapists and psychiatrist testified that respondent was not currently a threat to the child or others and was motivated to continue treatment.

However, there was also clear and convincing evidence that family reunification under the circumstances would be a very long and arduous process and that it had not even begun yet. Respondent was not ready to parent, and it was unclear when she would be ready. Her treating psychiatrist, Dr. Anthony Wolf, testified that "[i]t would be too idealistic to think that a patient once on a standard regimen of medications was never going to experience symptoms ever again." Wolf explained that schizoaffective disorder was by its nature episodic and manifested itself in the future. Ward had testified that some patients decompensate even when medicated. Respondent had been taught to recognize the symptoms and would be able to address them and seek help for them, and respondent's support system would also be in place to help respondent recognize and identify any symptoms. However, respondent's friends and family all testified that they had never noticed anything different or wrong about respondent in the month leading up to the incident. Moreover, respondent's husband was home with respondent during the incident and was unable to prevent it.

Considering that there was no evidence of a timeframe in which the family reunification process could begin and that respondent's ability to parent depended on a multitude of different factors coalescing daily, the trial court did not clearly err in determining that termination of respondent's parental rights was in the child's best interests.

¹ At the very least, MCL 712A.19b(3)(g) was clearly established, and only one statutory ground need be established to justify the termination of parental rights. See *Trejo*, 462 Mich at 355-356.

Affirmed.

/s/ Stephen L. Borrello

/s/ Patrick M. Meter

/s/ Douglas B. Shapiro